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Lead Counsel for Lead Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

STEPHEN MERRITT, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

BARCLAYS PLC, et al.,

Defendants.

) Case No. 2:23-cv-09217-MEMF-KS

) CLASS ACTION

) PLAINTIFFS' RESPONSE TO
) DEFENDANT JAMES E. STALEY'S
) REQUEST FOR JUDICIAL NOTICE IN
) SUPPORT OF DEFENDANT'S MOTION TO
) DISMISS THE AMENDED CLASS ACTION
) COMPLAINT

DATE: June 12, 2025

TIME: 10:00 a.m.

COURTROOM: 8B, The Honorable Maame
Ewusi-Mensah Frimpong

1 Plaintiffs respectfully submit this response to Defendant James E. Staley’s Request for
2 Judicial Notice in Support of Defendant’s Motion to Dismiss the Amended Class Action
3 Complaint (ECF 57).¹ Staley has improperly referenced facts and documents in his Motion to
4 Dismiss the Amended Class Action Complaint (herein, “Motion” or “Mtn.”) (ECF 56) and asked
5 the Court to accept those facts and documents as true, which the Court is not permitted to do under
6 established law. At the same time, Staley’s Motion mischaracterizes those facts and documents in
7 an apparent attempt to improperly influence the Court’s view of the Complaint’s allegations. The
8 Court should strike those documents, or alternatively, convert Staley’s Motion into a motion for
9 summary judgment and allow Plaintiffs to take discovery.

10 **I. LEGAL STANDARD**

11 At the pleading stage, the Court’s analysis is confined to the Complaint, with exceptions
12 only for materials that are the proper subject of judicial notice or incorporation by reference. *Khoja*
13 *v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

14 Under the incorporation-by-reference doctrine, a court may consider extrinsic evidence on
15 which a complaint ““necessarily relies” if: (1) the complaint refers to the document; (2) the
16 document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy
17 attached to the 12(b)(6) motion.”” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir.
18 2010); *see also No. 84 Emp.-Teamster Joint Council Pension Tr. Fund v. Am. W. Holding Corp.*,
19 320 F.3d 920, 925 n.2 (9th Cir. 2003) (the incorporation-by-reference doctrine allows the court to
20 consider documents “referenced in the complaint and whose authenticity has not been
21 questioned”).

22 Judicial notice offers only a narrow exception to the general rule that the evaluation of a
23 complaint on a motion to dismiss is limited to the allegations set forth in the complaint, which are
24 taken as true. *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). A court may, on its own,
25 judicially notice a fact, but the fact may not be “subject to reasonable dispute because it: (1) is

26
27 ¹ Unless otherwise specified, capitalized terms shall have the meaning as defined in the Amended Class Action
28 Complaint for Violations of the Securities Laws of the United States and the United Kingdom (“Complaint”).
Emphasis is added and citations are omitted throughout unless otherwise indicated.

generally known within the trial court’s territorial jurisdiction; or (2) can be . . . readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Even if a document qualifies as a public record, courts “cannot take judicial notice of disputed facts” in the documents. *Khoja*, 899 F.3d at 999; *see In re Tracht Gut, LLC*, 836 F.3d 1146, 1150 (9th Cir. 2016) (“At the motion to dismiss phase, the trial court must accept as true all facts alleged in the complaint and draw all reasonable inferences in favor of the plaintiff.”).

Thus, if extrinsic documents are considered, courts cannot use judicial notice or incorporation by reference to establish the truth of the representations contained therein. *Khoja*, 899 F.3d at 1003 (“[I]t is improper to assume the truth of an incorporated document if such assumptions only serve to dispute facts stated in a well-pleaded complaint.”); *Lee*, 250 F.3d at 690 (courts may not take judicial notice ““for the truth of the facts recited therein””); *Howse v. Chiquita Canyon, LLC*, __ F. Supp. 3d __, 2024 WL 4828705, at *14 (C.D. Cal. Nov. 19, 2024) (“[T]he Court will only take notice that these documents exist, and will not take notice of any potentially disputed facts within the documents.”); *Weissbrod v. Live Nation Ent. Inc.*, 2024 WL 5317316, at *4 (C.D. Cal. Sept. 27, 2024) (same). Thus, courts must reject “the unscrupulous use of extrinsic documents to resolve competing theories against the complaint” so as to avoid “premature[ly] dismiss[ing] . . . plausible claims that may turn out to be valid after discovery.” *Khoja*, 899 F.3d at 998.

When material outside the complaint is presented to and not excluded by the court, “the motion must be treated as one for summary judgment under Rule 56 [and] [a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.” Fed. R. Civ. P. 12(d); *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003); *Sheets v. Admin. Comm. of Northrop Grumman Space & Mission Sys. Salaried Pension Plan*, 2024 WL 4372265, at *3 (C.D. Cal. Sept. 30, 2024) (“A court considering a motion to dismiss should not take judicial notice of material that cannot be considered for the motion.”).

II. STALEY’S REQUESTS SHOULD BE DENIED IN PART

Staley’s improper request that the Court consider seven documents extrinsic to the Complaint when deciding his Motion must be denied. Plaintiffs do not deny that these documents

1 are properly incorporated by reference into the Complaint, or, in the case of Exhibit 7, the proper
2 subject of judicial notice; however, in certain instances, Staley runs afoul of the rule that “it is
3 improper to assume the truth of an incorporated document if such assumptions only serve to
4 dispute facts stated in a well-pleaded complaint.” *Khoja*, 899 F.3d at 1003. As the Ninth Circuit
5 has explained, “[a] court must . . . consider – and identify – which fact or facts it is noticing.” *Id.*
6 at 999.

7 **A. Exhibit 1**

8 Exhibit 1 is a copy of a July 22, 2019 *New York Times* article titled “Jeffrey Epstein’s Deep
9 Ties to Top Wall Street Figures.” Plaintiffs do not object to the judicial notice of this news article
10 for the limited purpose of determining what information was available to the public on the date of
11 publication. However, “[t]he truth of the content, and the inferences properly drawn from them . . .
12 is not a proper subject of judicial notice under Rule 201.” *Patel v. Parnes*, 253 F.R.D. 531, 546
13 (C.D. Cal. 2008). Thus Plaintiffs do challenge Staley’s attempt to interpret the article as the
14 disclosure of the facts that Plaintiffs allege were omitted from Defendants’ statements regarding
15 Epstein and Staley’s relationship. In his Motion, Staley uses Exhibit 1 in an attempt to show truth-
16 on-the-market, a defense that is inappropriate at this stage. Mtn. at 14; see *In re Amgen Inc. Sec.*
17 *Litig.*, 544 F. Supp. 2d 1009, 1025 (C.D. Cal. 2008). Staley contends the article shows that “there
18 was more than sufficient information in the public domain for investors to come to their own
19 conclusions about Staley’s relationship with Epstein and the FCA investigation.” Mtn. at 14. But
20 the article did not reveal the close, personal relationship the men shared, which Staley knew
21 involved affirmations of his “deep” and “cherished” friendship with Epstein, or that he sought
22 Epstein’s advice on personal and confidential business matters, protected him from JPMorgan’s
23 ousting when JPMorgan executives identified him as “a known child sleaze,” and had exchanged
24 at least one email with “a picture of a young woman in a sexually suggestive pose.” ¶¶56, 81.
25 Moreover, the FCA’s investigation would not begin until almost a month later so the article could
26 not reveal anything about that. ¶60. Finally, while *The New York Times* article was public, it
27 cannot be taken as a true or accurate indication of what investors understood about Staley’s
28

1 relationship with Epstein during the relevant time period, especially in light of Defendants’
2 repeated statements that the relationship was a professional one. *See, e.g.*, ¶¶69, 71-72.

3 **B. Exhibit 2**

4 Exhibit 2 is a copy of excerpts of Barclays Annual Report dated February 13, 2020 and
5 filed with the SEC as a Form 20-F. Plaintiffs do not object to the judicial notice of this filing for
6 the limited purpose of determining what information was available to the public on the date of
7 publication. Plaintiffs do, however, challenge Staley’s attempt to interpret the February 13, 2020
8 Annual Report as the disclosure of the facts that Plaintiffs allege to have been omitted from
9 Defendants’ statements regarding the FCA’s investigation. *See Patel*, 253 F.R.D. at 546. In his
10 Motion, Staley asserts that the Annual Report is evidence that investors were not misled regarding
11 the FCA’s investigation. Mtn. at 12. Staley’s attempt to assert his own version of events regarding
12 the conduct and initiation of the FCA’s investigation is improper, since among other issues, the
13 Annual Report continued to characterize Staley’s relationship with Epstein as “*professional*.” ¶69
14 Moreover, while disclosing the existence of the FCA investigation, Defendants still concealed their
15 mischaracterization of that relationship to the FCA. ¶81.

16 **C. Exhibit 3**

17 Exhibit 3 is a copy of a November 12, 2021 *Financial Times* article titled “Jes Staley
18 exchanged 1,200 emails with Epstein that included unexplained phrases.” Plaintiffs do not object
19 to the judicial notice of this press release for the limited purpose of determining what information
20 was available to the public on the date of publication. Plaintiffs do, however, challenge Staley’s
21 attempt to interpret the November 12, 2021 *Financial Times* article as a complete disclosure of the
22 facts that Plaintiffs allege to have been omitted from Defendants’ statements regarding the FCA’s
23 investigation and Staley’s relationship with Epstein. *See Patel*, 253 F.R.D. at 546. In his Motion,
24 Staley uses Exhibit 3 in an attempt to show truth-on-the-market, a defense, which is inappropriate
25 at this stage. *See Amgen*, 544 F. Supp. 2d at 1025. Staley contends the article shows that “there
26 was more than sufficient information in the public domain for investors to come to their own
27 conclusions about Staley’s relationship with Epstein and the FCA investigation,” Mtn. at 14,
28 despite the fact that the *Financial Times* did not have access to, let alone quote, the emails. ¶85.

Whether the alleged misstatements and omissions were material and how the *Financial Times* article was understood is a disputed question of fact that should not be accepted as true.

D. Exhibit 4

Exhibit 4 is a copy of a November 28, 2021 *Financial Mail on Sunday* article titled “Barclays boss calls top shareholders to warn messages between Jeffrey Epstein and former boss Jes Staley are ‘uncomfortable’ reading.” Plaintiffs do not object to the judicial notice of this news article for the limited purpose of determining what information was available to the public on the date of publication. Plaintiffs do, however, challenge Staley’s attempt to interpret the November 28, 2021 *Financial Mail on Sunday* article as a complete disclosure of the facts that Plaintiffs allege to have been omitted from Defendants’ statements regarding the FCA’s investigation and Staley’s relationship with Epstein. *See Patel*, 253 F.R.D. at 546. In his Motion, Staley uses Exhibit 4 in an attempt to show truth-on-the-market, a defense, that is inappropriate at this stage. Mtn. at 14; *see Amgen*, 544 F. Supp. 2d at 1025. While the article did discuss the FCA’s investigation, at that point, it was, as Staley acknowledged, still a “question whether Barclays and Staley had been candid about the relationship in connection with the FCA investigation.” Mtn. at 14. The inference that Staley seeks to draw that there was no material misrepresentation is inappropriate and should be rejected.

E. Exhibit 5

Exhibit 5 is an excerpted copy of the Government of the U.S. Virgin Islands’ unredacted complaint against JPMorgan in *Gov’t of the U.S. Virgin Islands v. JPMorgan Chase Bank, N.A.*, No. 1:22-cv-10904 (S.D.N.Y.), dated February 15, 2023. Plaintiffs do not object to the judicial notice of this complaint for the limited purpose of determining what information was available to the public on the date of publication. Plaintiffs do, however, challenge Staley’s attempt to interpret the complaint as a complete disclosure of the facts that Plaintiffs allege to have been omitted from Defendants’ statements regarding the FCA’s investigation and Staley’s relationship with Epstein. *See Patel*, 253 F.R.D. at 546. In his Motion, Staley uses Exhibit 4 in an attempt to show truth-on-the-market, a defense, that is inappropriate at this stage. Mtn. at 14; *see Amgen*, 544 F. Supp. 2d at 1025. But Staley’s invocation of this defense is self-defeating, since he acknowledges that the

lawsuit only “partially unveiled” the emails. Mtn. at 14. Moreover, the filing of the unredacted complaint says nothing about Barclays’ review of these communications or Defendants’ misleading characterization of Staley and Epstein’s relationship to the FCA.

F. Exhibit 6

Exhibit 6 is a copy of the Financial Conduct Authority’s Decision Notice (“FCA Decision”) dated May 30, 2023, and published October 12, 2023. Plaintiffs do not object to the judicial notice of the report for the limited purpose of determining what information was available to the public on the date of publication. *See Patel*, 253 F.R.D. at 546. Staley contends that the report shows the truth had already been disclosed and thus, there was no loss causation. Mtn. at 16. This, of course, is a disputed fact, because until the FCA Decision was announced, the public did not know that Defendants had recklessly misled the FCA about the nature and extent of Staley’s relationship with Epstein. ¶¶104-112. Because Staley seeks to insert an improper, factually intensive, truth-on-the market defense, the Court should not take judicial notice. *Amgen*, 544 F. Supp. 2d at 1025; *Howse*, 2024 WL 4828705, at *14.

G. Exhibit 7

Exhibit 7 is a copy of Barclays’ historical stock information from September 1, 2023 through December 31, 2023. Plaintiffs do not object to Staley’s use of this document to show the historical price of Barclays shares. Mtn. at 17; *see ScripsAmerica, Inc. v. Ironridge Glob. LLC*, 119 F. Supp. 3d 1213, 1253 (C.D. Cal. 2015).

III. CONCLUSION

Where Staley has offered the exhibits for the truth asserted, they should be stricken and disregarded. If the Court accepts Defendant’s exhibits for the truth asserted, then under Federal Rule of Civil Procedure 12(d), Staley’s Motion has been converted into one for summary judgment and Plaintiffs should have the opportunity to conduct discovery.

DATED: January 17, 2025

Respectfully submitted,

s/ Ashley M. Price
ASHLEY M. PRICE

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